Georgetown, Holy Cross, Indiana University, Lawrence, Leland Stanford, Massachusetts Institute of Technology, University of Missouri, University of Mount Allison, University of New Brunswick, New York University, Pennsylvania College, Tufts, Tulane University of Louisiana, Washington and Jefferson, Wesleyan University, University of Wooster.

INCRIMINATING QUESTIONS UNDER THE BANKRUPTCY ACT. — The recent case of *In re Rosser*, 96 Fed. Rep. 305 (Dist. Ct., Mo.) has picked a new flaw in the National Bankruptcy Act. *In re Scott*, 1 Am. Bank. Rep. 50 *acc.* An insolvent refused to answer certain questions before a referee on the ground that the answers might tend to incriminate him, relying on the Fifth Amendment to the Constitution. It was held that he might refuse to answer — § 7 of the Bankruptcy Act, that "no testimony given by him shall be offered in evidence against him in any criminal proceeding," notwithstanding. In the case of *Counselman* v. *Hitchcock*, 142 U. S. 547, it was held that one under investigation before a grand jury was protected from incriminating questions in spite of a statute (Revised Statues, § 860) which provided that no evidence given in a judicial proceeding could "be given in evidence or in any way used against him" in any subsequent proceeding. In a later case, *Brown* v. *Walker*, 161 U. S. 591, a statute more broadly framed against any use whatever of so-called incriminating evidence in or for later proceedings was held to do away with the possibility of incrimination, and so the application of the constitutional privilege, and a stubborn witness was refused a writ of *habeas corpus*. In spite of these decisions the clause which was inserted in the new Bankruptcy Act is weaker than the proviso which was discussed in *Counselman* v. *Hitchcock*, — it seems simply a bit of carelessness. The only operation it can have is to induce a bankrupt to make disclosures — it was intended to force him.

In England it has been held, since Lord Eldon in *Re Cossens*, 1 Buck. 531, that the common law privilege against self-incrimination is without application in Bankruptcy proceedings. *Re Smith*, 2 Deac. & Chit. 230; *Ex parte Reynolds*, 20 Ch. D. 294; Lowell, Bankruptcy, § 158. Since bankruptcy proceedings are an exception to the common law privilege against self-incrimination, might not the constitutional privilege be construed to have the same exception — especially in view of the fact that bankruptcy legislation is, in one aspect, favorable to the bankrupt? The English cases that established the exception do not seem, however, to antedate 1820, *Re Cossens*, *supra*, and the argument has never been raised in the United States.

THE VALIDITY OF FOREIGN CONTRACTS. — The law applied by the courts of England in the enforcement of foreign contracts, ever since the decision of *Jacobs* v. *Credit Lyonnais*, 12 Q. B. D. 589, has remained uncertain. So far as any definite rule is laid down, they determine the validity of the contract by the law of that jurisdiction which the parties intended should govern. Since such intent is rarely expressed, this rule without further elaboration is unserviceable. Therefore, after Lord Justice Bowen, in the case above cited, declared it unwise to lay down specific rules in a matter of such growing commercial importance, each succeeding case has been obliged to seek out its own decisive reason.

A variety of conflicting presumptions have been developed. In consequence, in the case of *South African Breweries* v. *King*, [1899] 2 Ch. D. 173, the court had to resort to the phrase: "the law of the place with which the contract has most real connection." In this case an injunction was sought against the violation in Natal, South Africa, of a contract made in the South African Republic not to engage in the brewing business in any part of South Africa for five years. The injunction was refused on the ground that the stipulation was void by the law of the Transvaal. Of the propriety of this result there can be little doubt on any view, since performance was due in part, at least, at the place of contracting. Exception may be taken, however, to such indeterminate language.

In this country, if the cases have not been so wilfully vague as in England, they have often been equally indiscriminating. They have failed, it would seem, to analyze the elements of contracts before determining which law to apply to the element in question. In regard to validity, which was the issue in the principal case, many of our courts, notably the Federal courts, have followed the later English cases in applying the law which it is presumed the parties intended to incorporate in the contract. Unlike the English cases, however, they presume this to be the law of the place of performance. *Pritchard* v. *Norton*, 106 U. S. 124. Most jurisdictions, on the contrary, have determined the legality of contracts by the law of the place where the contract was made. *Aker* v. *Demond*, 103 Mass. 318; *Staples* v. *Nott*, 128 N. Y. 403.

This divergence is an example of a failure to analyze and of an undue extension of the test of the intent of the parties, which is useful only in cases of interpretation. Since interpretation seeks only the intent of the parties expressed in an obligation admittedly binding, the law governing interpretation doubtless should be that of the place which the parties may be presumed to have intended should govern. But no such reason exists for applying this test in deciding the validity of a contract. A legal right can be created only by the law. Until it makes binding a personal relation, the intent of the parties can be of no consequence. This reasoning, as carefully developed in 10 Harvard Law Review, 168, leads to the true rule for determining which law to apply. The law that imposes the obligation must have jurisdiction of the act which invokes it. Hence the tests of the legality of a contract should be sought — where most of our courts have sought them — in the law of the place where the contract is made.

SUBROGATION AND VOLUNTEERS. — A recent case, *Brown* v. *Rouse*, 58 Pac. Rep. 267 (Cal., Sup. Ct.), illustrates the length to which a court of equity will go in refusing subrogation to a volunteer. The defendant's husband, acting under a power of attorney which the plaintiff, under a mistake of law, thought authorized a mortgage, gave the plaintiff a mortgage on the defendant's land in return for a loan, with which a prior mortgage on the land was paid off. The court held that as the plaintiff was under no obligation to discharge the prior mortgage, he, as a volunteer, could not be subrogated to the rights of the prior mortgagee. Subrogation, it is said, will be decreed only in favor of a party who is in some way compelled to discharge a demand against a common debtor.

The rule adopted in the principal case is that sanctioned by the weight